

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

ID No.

Telephone Number:

Attn:

Refer Reply To:

CC:ITA:6

PLR-141616-09

Date:

October 27, 2009

DO:

TY:

LEGEND:

<u>S Corporation</u>	=
<u>Taxpayer</u>	=
<u>Old CPA Firm</u>	=
<u>Outside Firm</u>	=
<u>New CPA Firm</u>	=
<u>Date of Transfer</u>	=
<u>Minority Owner</u>	=
<u>City</u>	=
<u>State</u>	=
<u>Year A</u>	=
<u>Year B</u>	=
<u>Year C</u>	=
<u>X%</u>	=

Dear :

We received New CPA Firm's letter of September 4, 2009, which notes Taxpayer's request for an extension of time under § 301.9100-1 of the Procedure and Administration Regulations to file Form 970, Application To Use LIFO Inventory Method, for the taxable year ending December 31, Year A. See *a/so* § 301.9100-3.

Facts

The following facts have been obtained from the above-referenced letter, the accompanying affidavit, and a completed draft of Form 970. For many years, Taxpayer has operated an automobile dealership in City, State. Years ago, S Corporation filed a Form 970 on behalf of Taxpayer's inventories because Taxpayer was properly treated as a disregarded entity for federal income tax purposes.

On Date of Transfer, a X% interest in Taxpayer was transferred to Minority Owner. Because of this transfer of ownership, for federal income tax purposes, Taxpayer became a partnership and lost its status as a disregarded entity. Thus, Taxpayer became obligated to file an annual Form 1065, U.S. Return of Partnership Income, and to file Form 970 for the taxable year it wanted to elect to use the LIFO inventory method.

Old CPA Firm failed to file Form 970 with Taxpayer's Form 1065 for the taxable year ending December 31, Year A and to compute Taxpayer's opening inventories using the average-cost method. See, e.g., Rev. Rul. 70-564, 1970-2 C.B. 109. Old CPA Firm did not actually compute the LIFO inventories of S Corporation. All LIFO-related computations were performed by Outside Firm, which was unaware of the transfer of ownership and of the fact that a new partnership (i.e., Taxpayer) had become the owner of those inventories. In Year C, New CPA Firm discovered that Taxpayer had not filed Form 970 and brought that fact to Taxpayer's attention. Thereafter, attempting to comply with Rev. Rul. 70-564 on a catch-up basis in Year C, Taxpayer changed its LIFO inventory method without obtaining the Commissioner's consent. Taxpayer will file amended Forms 1065 for Year A, Year B, and Year C to comply with Rev. Rul. 70-564.

Law

Section 472(a) of the Internal Revenue Code provides that a taxpayer may use the method provided in subsection (b) [LIFO inventory method] in inventorying goods specified in an application to use such method filed at such time and in such manner as the Secretary may prescribe.

Section 1.472-3(a) of the Income Tax Regulations provides in relevant part that the LIFO inventory method may be adopted and used only if the taxpayer files with its income tax return for the taxable year as of the close of which the method is first to be used a statement of its election to use such inventory method.

Section 301.9100-1(b) defines "regulatory election" as an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin.

Section 301.9100-1(c) provides in relevant part that the Commissioner has discretion to grant a reasonable extension of the time to make a regulatory election under all subtitles of the Code except subtitles E, G, H, and I, if the taxpayer has acted reasonably and in good faith and if granting that relief will not prejudice the interests of the Government.

Section 301.9100-3 provides the standards that the Commissioner will use in determining whether to grant an extension of time to make a regulatory election. It also provides information and representations that must be furnished by the taxpayer to enable the Internal Revenue Service to determine whether the taxpayer has satisfied these standards. The relevant standards are whether the taxpayer acted reasonably and in good faith and whether granting relief would prejudice the interests of the Government.

Section 301.9100-3(b)(1)(i) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer requests relief under this section before the failure to make the regulatory election is discovered by the Service.

Section 301.9100-3(b)(3) provides that a taxpayer will not be considered to have acted reasonably and in good faith if the taxpayer seeks to alter a return position for which an accuracy-related penalty has been or could be imposed under § 6662 at the time the taxpayer requests relief and the new position requires or permits a regulatory election for which relief is requested or if the taxpayer was informed in all material respects of the required election and related tax consequences but chose not to file the election. Furthermore, a taxpayer ordinarily will not be considered to have acted reasonably and in good faith if the taxpayer uses hindsight in requesting relief.

Section 301.9100-3(c)(1)(i) provides that the interests of the Government are prejudiced if granting relief would result in a taxpayer having a lower tax liability in the aggregate for all tax years affected by the regulatory election than the taxpayer would have had if the election had been timely made (taking into account the time value of money). Similarly, if the tax consequences of more than one taxpayer are affected by the election, the Government's interests are prejudiced if extending the time for making the election may result in the affected taxpayers, in the aggregate, having a lower tax liability than if the election had been timely made.

Section 301.9100-3(c)(1)(ii) provides that the interests of the Government are ordinarily prejudiced if the tax year in which the regulatory election should have been made or any tax years that would have been affected by the election had it been timely made are closed by the period of limitations on assessment under § 6501(a) before the taxpayer's receipt of a ruling granting relief under this section.

Conclusion

The information and representations submitted by Taxpayer (and accompanied by a penalty of perjury statement executed by an appropriate party) establish that the taxpayer has acted reasonably and in good faith in this request. Furthermore, granting an extension will not prejudice the interests of the Government, provided Taxpayer files the three amended returns described above in Facts. Accordingly, an extension of time is hereby granted to file the necessary Form 970, for the taxable year ending December 31, Year A. This extension shall be for a period of 30 days from the date of this ruling. Please attach a copy of this ruling to the Form 970 when it is filed. Though this office has not verified any of the information and representations submitted by Taxpayer, those items are subject to verification on examination.

No opinion is expressed as to the application of any other provisions of the Code or the regulations which may be applicable to the transaction. Specifically, no opinion is expressed regarding the propriety of the LIFO inventory methods used by the taxpayer.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to the taxpayer's authorized representative.

Please contact the person whose name and telephone number are shown above if you have any questions.

Sincerely,

Roy A. Hirschhorn
Senior Technician Reviewer, Branch 6
Office of Associate Chief Counsel
(Income Tax & Accounting)